IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITES STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 08-CV-2469
v.	)	
	)	
LIFEWAY FOODS, INC., an Illinois Corporation, JULIE SMOLYANSKY, AND EDWARD SMOLYANSKY, individuals,	)	JUDGE ANDERSEN
	)	
Defendant.	)	

NOTICE OF MOTION
TO ENTER CONSENT DECREE OF PERMANENT INJUNCTION

To: All counsel of record

Please take notice that on Thursday, May 15, 2008, at 9 a.m., or as soon thereafter as counsel may be heard, I will appear before the Honorable Wayne R. Andersen in Room 1403of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, or before such other judge who may be sitting in his place and stead, and then and there present the United States' Motion to Enter Consent Decree of Permanent Injunction, at which time and place you may appear, if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/ Donald R. Lorenzen
DONALD R. LORENZEN
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5330

MOTION TO ENTER CONSENT DECREE OF PERMANENT INJUNCTION

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, requests that the court enter the attached Consent Decree of Permanent Injunction, and in support of this motion, states as follows:

1. On January 18, 2008, the United States Department of Justice notified Lifeway Foods, Inc. ("Lifeway"); Julie Smolyansky, Lifeway's President and Chief Executive Officer; and Edward Smolyansky, Lifeway's Chief Financial Officer (hereafter, collectively "the defendants") that it was prepared to file a complaint for permanent injunction against them regarding violations of the Federal Food, Drug, and Cosmetic Act ("the Act"). (A copy of the January 18, 2008 letter is attached hereto as Exhibit 1.) The January 18, 2008 letter attached a proposed consent decree of permanent injunction. See Exhibit 1.

2. Following receipt of the January 18, 2008 letter, counsel for the government and for the defendants engaged in a lengthy period of negotiation regarding the proposed consent decree and reached agreement regarding its terms. On April 20, 2008, the defendants signed the attached Consent Decree of Permanent Injunction ("signed (proposed) Consent Decree"), and their counsel signed it April 24, 2008, and forwarded it to government counsel for filing with this Court. (A copy of the signed (proposed) Consent Decree is attached hereto as a Proposed Order.) The signed (proposed) Consent Decree requires, among other things, that defendants cease processing, packing, holding, labeling, and/or distributing certain food products at their facilities at 7625 Austin Avenue, Skokie, Illinois; 5201 Harbison Avenue, Philadelphia, Pennsylvania (hereafter, "Philadelphia facility"), or at any other location, unless and until certain requirements are met. See signed (proposed) Consent Decree, ¶ 5.

3. On April 30, 2008, the United States filed the Complaint in this action. (R. 1.) The Complaint alleges that the defendants violated the Act, 21 U.S.C. § 331(a), by introducing, or delivering for introduction, into interstate commerce food that is adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(i). The Complaint further alleges that the defendants violate the Act, 21 U.S.C. § 331(k), by causing articles of food to become adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(i), while such articles are held for sale after shipment in interstate commerce. See Complaint (R. 1), ¶¶ 11-27.

4. On May 1, 2008, the defendants filed an Answer to the Complaint. (R. 6.) In their Answer, the defendants denied the government's allegation that they own and operate the Philadelphia facility, see Ans. ¶ 5, even though they had already agreed to provisions of the signed (proposed) Consent Decree that expressly apply to that facility. The defendants did not call into question their ownership of the Philadelphia facility at any time during the parties' negotiations.

5. The defendants' counsel, Richard N. Kessler, represented to government counsel on Thursday, May 1, 2008—after filing his clients' Answer earlier that day—that the Philadelphia facility was actually operated by a wholly-owned subsidiary of Lifeway called LFI Enterprises, Inc. However, up to that point—during the FDA's investigation; the Justice Department's contact with Lifeway Foods; the parties' negotiations; the United States' filing of its Complaint; and defendants' filing their Answer—LFI Enterprises, Inc., had not existed as a corporate entity, because the Illinois Secretary of State involuntarily dissolved it on February 1,

2003, over three years ago. (Copies of LFI Enterprises's Certificate of Dissolution and of an Illinois Secretary of State Corporation File Detail Report for LFI Enterprises, dated May 5, 2008, and showing its status as "Dissolved," are attached hereto as Exhibits 2 and 3.)

6. At some point after filing their Answer on Thursday, May 1, 2008, the defendants caused LFI Enterprises' status to be reinstated with the Illinois Secretary of State. (A copy of a Corporation File Detail Report for LFI Enterprises, dated today, May 9, 2008, and showing its status as "Reinstated/Good Standing," is attached hereto as Exhibit 4.) Defendant Julie Smolyansky is LFI Enterprise's president, and Defendant Lifeway Food's address is its address. See Exhibit 4. Mr. Kessler is identified as its registered agent for service of process. See id.

7. Mr. Kessler has represented to government counsel that the defendants will negotiate an amendment to the signed (proposed) Consent Decree to include LFI Enterprises.

8. Although the parties may later submit to the Court an amended Consent Decree that specifically names LFI Enterprises along with the current defendants, the government requests that the attached signed (proposed) Consent Decree be entered at this time so that the injunctive provisions designed to correct the defendants' violations of the Act can take effect.

9. Undersigned counsel for the United States (Lorenzen and Crane-Hirsch) had extended discussions about this motion with defendants' counsel Peter Berk Monday this week, May 5, 2008, and again today, May 9, 2008. Mr. Berk advised today that he has consulted with his clients during this week. He further advised that (as of this afternoon) his clients have not authorized him to agree to this motion; and that, so far as he knows, his clients' only reason is that they are concerned that this motion will unduly clutter the Court's docket.

WHEREFORE, the United States requests that the Court enter the attached signed (proposed) Consent Decree of Permanent Injunction to which the parties have agreed.

Respectfully submitted,

Dated: May 9, 2008
Washington, DC

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Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

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Northern District of Illinois

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January 18, 2008

Ms. Julie Smolyansky, President and CEO
Mr. Edward Smolyansky, CFO
Lifeway Foods, Inc.
6431 W. Oakton Street
Morton Grove, IL 60053-2727
Via FedEx

RE: United States of America v. Lifeway Foods, Inc., an Illinois Corporation, Julie Smolyansky, and Edward Smolyansky, Individuals (N.D. Ill. not yet filed)

Dear Ms. Smolyansky and Mr. Smolyansky :

The U.S. Department of Justice has been advised by the United States Food and Drug Administration (FDA) that you are processing food, specifically cream cheese spreads with lox, without adequate Hazard Analysis and Critical Control Point ("HACCP") plans; that you are preparing, marketing, and distributing food, specifically cream cheese spreads, that is misbranded due to labeling violations; and that due to your adulteration and misbranding, you are thereby violating the Federal Food, Drug, and Cosmetic Act ("Act"). In light of the extensive evidence that the FDA has collected, the Department of Justice is prepared to go to court on behalf of the United States of America to seek a permanent injunction against you to prevent further violations, by closing your food processing and distribution operations until you demonstrate that you are in compliance with the law.

The cream cheese spreads with lox that you process are adulterated within the meaning of 21 U.S.C. § 342(a)(4) because you are a seafood processor but do not have adequate HACCP plans in place for these products, in violation of 21 C.F.R. § 123.6. (On at least three occasions, Lifeway officials – including Ms. Smolyansky personally – have provided FDA with sanitation plans titled as if they were HACCP plans. And Lifeway has repeatedly promised to obtain adequate HACCP plans, but has failed to do so.)

In addition, your products are misbranded under the Act. Inspections by the FDA have found that the labels for your cream cheese spreads violate mandatory requirements to disclose major food allergens, *trans* fat levels, and *all* ingredients. In addition, the labels for your plain whipped cream cheese declare 2 grams of protein for serving, but FDA testing of samples of this

product in 2006 and again in 2007 found only 65% of the declared value of protein. Each of these violations renders your food products misbranded.

It is illegal to introduce adulterated food and misbranded food into interstate commerce. *See* 21 U.S.C. § 331(a). Judicial injunctions to restrain violations such as yours are authorized by 21 U.S.C. § 332(a).

Based upon the abundant evidence of repeated violations gathered by the FDA, the United States intends to file a civil case against you. In that lawsuit, the government will seek, among other things, a court order that will permanently order you not to process food in violation of the Act. Our lawsuit will ask the court to issue an injunction closing your operations until you demonstrate that you are in compliance with the law, and have acceptable procedures to remain in compliance with the law.

I hope that it will be possible for us to agree upon a consent decree that we could file with the court to address the changes that need to be made at your Philadelphia and Skokie facilities. Enclosed is a proposed consent decree stating the terms upon which the United States would be willing to settle the suit that we plan to file against you.

Please consult with an attorney regarding this proposed settlement. To accept the proposed settlement, please direct your attorney to contact me at 202-616-8242 or my colleague Gerald Kell at 202-514-1586 or the address listed above no later than the close of business on Monday, January 28, 2008.[1] If we do not hear from you or your attorney by January 28, 2008, we will assume that you are not interested in settling this case, and the United States will file an action in federal district court against you for injunctive relief.

[1] I will be out of the office the week of January 21-25, but Mr. Kell will be available.

If you or your attorney have any questions about this matter, I can be reached at 202-616-8242, and Mr. Kell can be reached at 202-514-1586.

Sincerely yours,

Daniel K. Crane-Hirsch

Daniel K. Crane-Hirsch
Trial attorney

Enclosure: Proposed consent decree for permanent injunction

cc: James K. Fitzpatrick
Food and Drug Division
Office of General Counsel
U.S. Department of Health and Human Services

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LIFEWAY FOODS, INC., an Illinois corporation, JULIE SMOLYANSKY, and EDWARD SMOLYANSKY, individuals, Defendants.	**Case No. _____** **[[DRAFT]]** **CONSENT DECREE OF PERMANENT INJUNCTION**

Plaintiff, United States of America, by its undersigned attorneys, having commenced this action by filing a Complaint for Permanent Injunction ("Complaint"), and Defendants, Lifeway Foods, Inc. ("Lifeway"), a corporation, and Julie Smolyansky and Edward Smolyansky, individuals, (hereinafter, "Defendants"), having appeared and consented to the entry of this Consent Decree of Permanent Injunction ("Decree") without contest and before any testimony has been taken, and the United States of America, having consented to this Decree;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the subject matter and over all parties to this action.

2. The Complaint states a cause of action against Defendants under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-399 ("the Act").

3. Defendants violate the Act, 21 U.S.C. § 331(a), by introducing or delivering for introduction into interstate commerce articles of food that are adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(1).

4. Defendants violate the Act, 21 U.S.C. § 331(k), by causing articles of food to become adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(1), while such articles are held for sale after shipment in interstate commerce.

5. Defendants and each and all of their officers, agents, representatives, employees, successors, assigns, attorneys, and any and all persons in active concert or participation with any of them who receive notice of this Decree, are hereby permanently restrained and enjoined, pursuant to 21 U.S.C. § 332(a) and the inherent equitable power of this Court, from processing, packing, holding, labeling, and/or distributing at their facilities located at 5201 Harbison Avenue, Philadelphia, Pennsylvania ("Philadelphia facility") and 7625 Austin Avenue, Skokie, Illinois ("Skokie facility"), or any other location, any products labeled as cream cheeses or cream cheese spreads (hereinafter collectively referred to as "cream cheese spreads"), including plain, lite, flavored, or seafood-containing cream cheese spreads, or other seafood products, unless and until:

A. For seafood-containing cream cheese spreads and other seafood products:

i. Defendants select an expert(s) having no personal or financial ties to Defendants or Defendants' families (other than the consulting agreement) and who, by reason of background, experience, and education, is qualified to develop a seafood Hazard Analysis

Critical Control Point ("HACCP") plan, and to ensure adequate implementation of such HACCP plan for the processing, packing, holding, labeling, and/or distributing of Defendants' seafood-containing cream cheese spreads and other seafood products at their facilities ("HACCP expert(s)"). Defendants shall inform the United States Food and Drug Administration ("FDA") in writing of the name(s) and qualifications of the HACCP expert(s) as soon as they retain such expert(s);

ii. The HACCP expert(s) conducts a hazard analysis and develops a HACCP plan(s) that is appropriate for processing, packing, holding, labeling, and/or distributing Defendants' seafood-containing cream cheese spreads and other seafood products;

iii. FDA approves, in writing, the HACCP plan(s) developed by the HACCP expert(s); and

iv. Defendants establish and implement to FDA's satisfaction the FDA-approved HACCP plan(s). Defendants shall assign the responsibility for implementing and monitoring the HACCP(s) plan to an employee or employees trained in HACCP requirements.

B. For plain, lite, flavored, and seafood-containing cream cheese spreads:

i. Defendants select an expert(s) having no personal or financial ties to Defendants or Defendants' families (other than the consulting agreement) who, by reason of background, experience, and education, is qualified to determine whether Defendants' plain, lite, flavored, and seafood-containing cream cheese spreads comply with 21 U.S.C. § 343 and applicable regulations ("labeling expert(s)"). Defendants shall inform FDA in writing of the name(s) and qualifications of the labeling expert(s) as soon as they retain such expert(s);

ii. Defendants' labeling expert(s) reviews all labels and labeling used by Defendants for their plain, lite, flavored, and seafood-containing cream cheeses spreads, and certifies in writing to FDA that all such labels and labeling are in compliance with 21 U.S.C. § 343 and applicable regulations; and

iii. Defendants provide to FDA the written certification from the labeling expert(s), and report in writing to FDA, all actions they have taken to ensure that the labels and labeling for their plain, lite, flavored, and seafood-containing cream cheese spreads are in compliance with 21 U.S.C. § 343 and applicable regulations.

C. Defendants, under FDA supervision, according to procedures approved by FDA, and as and when directed by FDA, bring into compliance with the Act and applicable regulations to the satisfaction of FDA, all plain, lite, flavored, and seafood-containing cream cheese spreads and other seafood products, held in the Philadelphia facility or Skokie facility, or held elsewhere for distribution by Defendants. Defendants shall provide the formulation of their products to FDA, and at FDA's discretion, Defendants shall perform or have performed for them analytical testing for the presence and quantity of nutrients declared in product labels and/or labeling.

D. FDA, at its discretion, inspects Defendants' facilities, food products, and labeling, including all records and test results relating to the processing, packing, holding, labeling, and/or distributing of plain, lite, flavored, and seafood-containing cream cheese spreads and other seafood products and, as FDA deems necessary, samples and analyzes Defendants' plain, lite, flavored, and seafood-containing cream cheese spreads and other seafood products.

The costs of all such inspections and analyses shall be borne by Defendants at the rates specified in Paragraph 10.

E. FDA notifies Defendants, in writing, that they appear to be in compliance with all of the requirements of Paragraph 5(A)-(C), the Act, and applicable regulations.

6. After Defendants receive written notification from FDA as specified in Paragraph 5(E) above, Defendants and each and all of their officers, agents, representatives, employees, attorneys, successors, assigns, and any and all persons in active concert or participation with any of them who receive actual notice of this Decree, are permanently restrained and enjoined from:

A. Directly or indirectly introducing or delivering for introduction into interstate commerce any food within the meaning of 21 U.S.C. § 321(f) that is adulterated within the meaning of 21 U.S.C. § 342(a)(4), or misbranded within the meaning of 21 U.S.C. § 343;

B. Directly or indirectly causing any food within the meaning of 21 U.S.C. § 321(f) to become adulterated, within the meaning of 21 U.S.C. § 342(a)(4), or misbranded within the meaning of 21 U.S.C. § 343, while such food is held for sale after shipment in interstate commerce; and

C. Failing to implement and continuously maintain the requirements of this Decree.

7. Representatives from FDA shall be permitted, without prior notice, and as and when FDA deems necessary, to make inspections of Defendants' facilities at their current locations, or at any future location(s), and, without prior notice, to take any other measures necessary to monitor and ensure continuing compliance with the terms of this Decree. Such inspections may, at FDA's discretion, include, but are not limited to, the taking of photographs

and samples and the examination and copying of all records that relate to the processing, packing, holding, labeling, and/or distribution of any article of food. Such inspections shall be permitted upon presentation of a copy of this Decree and appropriate credentials. The inspection authority granted by this Decree is apart from, and in addition to, the authority to make inspections under the Act, 21 U.S.C. § 374.

8. Defendants shall maintain copies of their HACCP plan(s) and all records required under such HACCP plan(s) pursuant to 21 C.F.R. Part 123, at the facility specified in such plan(s), in a location where they are readily available for reference and inspection by FDA representatives. Defendants shall retain all records required to be kept by the HACCP plan(s), by regulation, and/or this Decree for at least five (5) years after the date the records are prepared.

9. Defendants shall immediately provide any information or records to FDA, upon request, regarding the processing, packing, holding, labeling, and/or distribution of any article of food.

10. Defendants shall reimburse FDA for the costs of all FDA inspections, investigations, supervision, reviews, examinations, and analyses that FDA deems necessary to evaluate Defendants' compliance with this Decree. The costs of such inspections shall be borne by Defendants at the prevailing rates in effect at the time the costs are incurred. As of the date that this Decree is signed by the parties, these rates are: $78.09 per hour and fraction thereof per representative for inspection work; $93.61 per hour or fraction thereof per representative for analytical or review work; $0.485 per mile for travel expenses by automobile; government rate or the equivalent for travel by air or other means; and the published government per diem rate or the equivalent for the areas in which the inspections are performed per day, per representative for

subsistence expenses, where necessary. In the event that the standard rates applicable to FDA supervision of Court-ordered compliance are modified, these rates shall be increased or decreased without further order of the Court.

11. If any Defendant violates this Decree and is thus found in civil or criminal contempt, Defendants shall, in addition to other remedies, reimburse Plaintiff for its attorney fees (including overhead), investigational expenses, expert witness fees, court costs, and all other costs relating to such contempt proceedings.

12. Defendants shall immediately cease processing, packing, holding, labeling, and/or distributing any plain, lite, flavored, and seafood-containing cream cheese spread or other seafood product, if, based on the results of an inspection, analysis of a sample or samples, or other information, FDA notifies Defendants in writing that such article of food is adulterated or misbranded or that Defendants are not in compliance with the terms of this Decree, the Act, or applicable regulations. In addition, Defendants shall, as and when FDA deems necessary, recall all adulterated or misbranded articles of food that have been distributed or are under the custody and control of Defendants' agents, distributors, customers, or consumers. In addition, Defendants shall institute or re-implement any of the requirements set forth in this Decree and take any other corrective actions as FDA, in its discretion, deems necessary to bring Defendants into compliance with this Decree, the Act, and applicable regulations. Defendants shall immediately and fully comply with the terms of the notice from FDA requiring them to take corrective actions pursuant to this Paragraph. The provisions of this Paragraph are separate and apart from, and in addition to, all other remedies available to FDA. All costs of recall(s) and corrective actions shall be borne by Defendants. The costs of FDA inspections, sampling,

analyses, travel time, and subsistence expenses to implement the remedies set forth in this Paragraph shall be borne by Defendants at the rates specified in Paragraph 10.

13. Any cessation of operations as described in Paragraph 12 shall continue until Defendants receive written notification from FDA that Defendants appear to be in compliance with the Act, applicable regulations, and this Decree, and that Defendants may resume operations.

14. FDA, at its discretion, may require Defendants to perform or have performed for them, analytical testing of any new or reformulated plain, lite, or flavored cream cheese spread, and any new or reformulated seafood-containing cream cheese spread or seafood product, for the presence and quantity of nutrients declared in product labels and/or labeling. The entity conducting such analyses shall simultaneously provide to FDA and Defendants the results of all tests performed on the samples, along with the labels and labeling that correspond to each sample analyzed.

15. Defendants shall notify FDA, in writing, at least thirty (30) calendar days before any change in ownership, name, or character of the business that occurs after the entry of this Decree, including: a reorganization, relocation, dissolution, assignment, lease, or sale resulting in the emergence of a successor entity or corporation; the creation or dissolution of subsidiaries or any other change in the corporate structure or identity of Lifeway Foods, Inc., or any other current or future food processing business of Defendants; or the sale or assignment of business assets, such as buildings, equipment, or inventory that may affect compliance obligations arising out of this Decree. Defendants shall serve a copy of this Decree on any prospective successor or assignee at least thirty (30) calendar days prior to such sale or change of business. Defendants

shall provide FDA an affidavit of compliance with this Paragraph within fifteen (15) calendar days after such service on a prospective successor or assignee.

16. Defendants shall submit all notifications, correspondence, and communications to FDA required by the terms of this Decree to the Director, FDA Philadelphia District Office, U.S. Customhouse, Room 900, 2nd & Chestnut St., Philadelphia, PA 19106, and to the Director, FDA Chicago District Office, 550 W. Jackson Blvd., Suite 1500 South, Chicago, IL 60661.

17. All decisions specified in this Decree shall be vested in the sole discretion of FDA, which discretion shall be reviewed, if necessary, under the arbitrary and capricious standard set forth in 5 U.S.C. § 706(2)(A) and shall be based exclusively upon the written record that was before FDA at the time of the decision. No discovery may be had by either party.

18. Within ten (10) calendar days after the entry of this Decree, Defendants shall provide a copy of the Decree, by personal service or by certified mail, return receipt requested, to each and all of Defendants' officers, agents, representatives, employees, successors, assigns, attorneys, and any and all persons in active concert or participation with any of them.

19. Within twenty (20) calendar days after entry of this Decree, Defendants shall provide the Directors at both the FDA Philadelphia District Office and Chicago District Office, at the addresses set forth in Paragraph 16, an affidavit of compliance stating the fact and manner of compliance with Paragraph 18, and identifying the names and positions of all persons who were so notified.

20. Within ten (10) calendar days after the entry of this Decree, Defendants shall post a copy of this Decree on a bulletin board in the employee common areas at Defendants' facilities and shall ensure that the Decree remains posted so long as the Decree remains in effect.

21. After entry of the Decree, Defendants shall, within ten (10) calendar days of employment of any new employee hired by Defendants, provide such employee a copy of the Decree, by personal service or by certified mail, return receipt requested. Defendants shall keep these records under this Decree as required under Paragraph 8.

22. Except as provided in the foregoing provisions of this Decree, the parties shall bear their own costs and attorney fees in this action.

23. This Court retains jurisdiction of this action and the parties hereto for the purpose of enforcing and modifying this Decree and for the purpose of granting such additional relief as may be necessary and appropriate.

SO ORDERED:

Dated this _____ day of _____, 2008.

_____
United States District Judge

We hereby consent to the entry of the foregoing Decree.

FOR PLAINTIFF

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

Dated : _____, 2008

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FOR DEFENDANTS

Dated: _____, 2008

_____
[Insert attorney(s) name(s)]
Attorneys for Lifeway Foods, Inc., Julie Smolyansky, and Edward Smolyansky
[Insert attorney(s) contact information]

Dated: _____, 2008

_____
Julie Smolyansky
Individually and as President of Lifeway Foods, Inc.

Dated: _____, 2008

_____
Edward Smolyansky
Individually and as Chief Financial Officer of Lifeway Foods, Inc.

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		Bill transportation to:	151009182
From:	Marilyn Neal Department of Justice 1331 PENNSYLVANIA AVENUE, NW SUITE 950 N WASHINGTON, DC 20004 US 2023070175	**Courtesy rate quote:***	5.34
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		Shipper account number:	151009182
		Bill transportation to:	151009182
From:	Marilyn Neal Department of Justice 1331 PENNSYLVANIA AVENUE, NW SUITE 950 N WASHINGTON, DC 20004 US 2023070175	**Courtesy rate quote:***	5.34
		Discounted variable %	
		Cod amount	
		Special services:	
		Shipment Purpose:	
		Shipment type:	Express
		Commercial/Residential Status:	Commercial

Tracking no:	790919143521
Ship date:	Jan 17 2008
Service type:	Priority Overnight

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Please note

. *The courtesy rate shown here may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.
Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

Anniversary SEPTEMBER
County COOK

STATE OF ILLINOIS
Office Of
THE SECRETARY OF STATE

D 5700-566-1
File Number

CERTIFICATE OF DISSOLUTION OF DOMESTIC CORPORATION
BUSINESS CORPORATION ACT

WHEREAS it appears that

LFI ENTERPRISES, INC.
% PEDERSEN & HOUPT
161 N CLARK ST STE 3100
CHICAGO IL 60601

061103

CP0273460

being a corporation organized under the laws of the State of Illinois relating to Domestic Corporations has failed to **file an annual report and pay an annual franchise tax** as required by the provisions of "The Business Corporation Act" of the State of Illinois, in force JULY 1, A.D. 1984 and all acts amendatory thereof; AND WHEREAS, said acts provided that upon failure to **file an annual report and pay an annual franchise tax** the Secretary of State shall dissolve the corporation.

NOW THEREFORE, the Secretary of State of the State of Illinois, hereby dissolves the above corporation in pursuance of the provisions of the aforesaid Act.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield,
this 1 st day of FEBRUARY A.D. 2005

Secretary of State

H003785

CP0359403

9/92

Form **BCA-5.15**
NFP 105.15
(Rev. Jan. 2003)

NOTICE OF RESIGNATION OF REGISTERED AGENT

File # D 5700-56661

Jesse White
Secretary of State
Department of Business Services
Springfield, IL 62756
Telephone (217) 782-3647
www.cyberdriveillinois.com

Remit payment in check or money order, payable to "Secretary of State."

This Space for use by Secretary of State

FILED
FEB 25 2005
JESSE WHITE
SECRETARY OF STATE

FEB 28 2005
DEPARTMENT OF BUSINESS SERVICES

SUBMIT ONE ORIGINAL

This space for use by Secretary of State

Date

Filing Fee $ 5.00

Approved: BH

1. CORPORATE NAME: LFI Enterprises, Inc. 2/21

2. Name and address of registered agent and registered office as they appear on the records of the Office of the Secretary of State:

Registered Agent: Pedersen & Houpt
First Name *Middle Name* *Last Name*

Registered Office: 161 N. Clark Street, Suite 3100
Number *Street* *Suite # (A P.O. Box alone is not acceptable)*

Chicago, IL 60601 COOK
City *ZIP Code* *County*

3. Effective date of resignation: 03/31/05 . *(Not less than 30 days after its filing by the Secretary of State)*

4. Address of the principal office of the corporation as such is known to the registered agent:

Julie Smolyansky

6341 W. Oakton
Number *Street* *Suite #*

Morton Grove, IL 60053
City *ZIP Code* *County*

5. A copy of this notice has been sent to the principal office of the corporation at least 10 days prior to the date of its filing with the Secretary of State.

6. The undersigned affirms, under penalties of perjury, that the facts stated herein are true.

Dated February 10, 2005
(Month/Day) *(Year)*

by _____
(Signature of Principal Officer)

_____
(Type or Print Name)

by _____
(Signature of Registered Agent)

John H. Muehlstein, CEO of Pedersen & Ho
(Type or Print Name)

NOTE: ***If registered agent is an individual, this notice shall be signed by the registered agent.***

If registered agent is a corporation, this notice shall be signed by a principal officer.

C-200.6

CORPORATION FILE DETAIL REPORT

Entity Name	LFI ENTERPRISES, INC.	**File Number**	57005661
Status	DISSOLVED		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	09/30/1992	**State**	ILLINOIS
Agent Name	VACANT	**Agent Change Date**	03/31/2005
Agent Street Address	VACANT	**President Name & Address**	JULIE SMOLYANSKY 6431 W OAKTON MORTON GROVE 60053
Agent City	CHICAGO	**Secretary Name & Address**	INVOLUNTARY DISSOLUTION 02 01 05
Agent Zip	60601	**Duration Date**	PERPETUAL
Annual Report Filing Date	00/00/0000	**For Year**	2004

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CORPORATION FILE DETAIL REPORT

Entity Name	LFI ENTERPRISES, INC.	**File Number**	57005661
Status	REINSTATED/GOODSTANDING		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	09/30/1992	**State**	ILLINOIS
Agent Name	RICHARD N KESSLER	**Agent Change Date**	05/08/2008
Agent Street Address	640 N LASALLE ST #590	**President Name & Address**	JULIE SMOLYANSKY 6431 W OAKTON MORTON GROVE 60053
Agent City	CHICAGO	**Secretary Name & Address**	VAL NIKOLENKO 6431 W OAKTON MORTON GROVE 60053
Agent Zip	60610	**Duration Date**	PERPETUAL
Annual Report Filing Date	05/08/2008	**For Year**	2007

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Purchase Certificate of Good Standing

(One Certificate per Transaction)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LIFEWAY FOODS, INC., an Illinois corporation, JULIE SMOLYANSKY, and EDWARD SMOLYANSKY, individuals, Defendants.	No. 08-CV-2469 JUDGE ANDERSEN

CONSENT DECREE OF PERMANENT INJUNCTION

Plaintiff, United States of America, by its undersigned attorneys, having commenced this action by filing a Complaint for Permanent Injunction ("Complaint"), and Defendants, Lifeway Foods, Inc. ("Lifeway"), a corporation, and Julie Smolyansky and Edward Smolyansky, individuals, (hereinafter, "Defendants"), solely for the purpose of settlement of this case, having appeared and consented to the entry of this Consent Decree of Permanent Injunction ("Decree") without contest, without admitting or denying liability, and before any testimony has been taken, and the United States of America, having consented to this Decree;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court has jurisdiction over the subject matter and over all parties to this action.

2. The Complaint states a cause of action against Defendants under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-399 ("the Act").

3. The Complaint alleges that Defendants violate the Act, 21 U.S.C. § 331(a), by introducing or delivering for introduction into interstate commerce articles of food that are adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(1).

4. The Complaint alleges that Defendants violate the Act, 21 U.S.C. § 331(k), by causing articles of food to become adulterated within the meaning of 21 U.S.C. § 342(a)(4), and misbranded within the meaning of 21 U.S.C. §§ 343(q)(2)(A), 343(w)(1), 343(i)(2), and 343(a)(1), while such articles are held for sale after shipment in interstate commerce.

5. Defendants and each and all of their officers, agents, representatives, employees, successors, assigns, attorneys, and any and all persons in active concert or participation with any of them who receive notice of this Decree, are hereby permanently restrained and enjoined, pursuant to 21 U.S.C. § 332(a) and the inherent equitable power of this Court, from processing, packing, holding, labeling, and/or distributing at their facilities located at 5201 Harbison Avenue, Philadelphia, Pennsylvania ("Philadelphia facility") and 7625 Austin Avenue, Skokie, Illinois ("Skokie facility"), or any other location, any products labeled as cream cheeses or cream cheese spreads (hereinafter collectively referred to as "cream cheese spreads"), including plain, lite, flavored, or seafood-containing cream cheese spreads, or other seafood products, unless and until:

A. For seafood-containing cream cheese spreads and other seafood products:

i. Defendants select an expert(s) having no personal or financial ties to Defendants or Defendants' families (other than the consulting agreement) and who, by reason of background, experience, and education, is qualified to develop a seafood Hazard Analysis Critical Control Point ("HACCP") plan, and to ensure adequate implementation of such HACCP plan for the processing, packing, holding, labeling, and/or distributing of Defendants' seafood-containing cream cheese spreads and other seafood products at their facilities ("HACCP expert(s)"). Defendants shall inform the United States Food and Drug Administration ("FDA") in writing of the name(s) and qualifications of the HACCP expert(s) as soon as they retain such expert(s);

ii. The HACCP expert(s) conducts a hazard analysis and develops a HACCP plan(s) that is appropriate for processing, packing, holding, labeling, and/or distributing Defendants' seafood-containing cream cheese spreads and other seafood products;

iii. FDA approves, in writing, the HACCP plan(s) developed by the HACCP expert(s); and

iv. Defendants establish and implement to FDA's satisfaction the FDA-approved HACCP plan(s). Defendants shall assign the responsibility for implementing and monitoring the HACCP(s) plan to an employee or employees trained in HACCP requirements.

B. For plain, lite, flavored, and seafood-containing cream cheese spreads:

i. Defendants select an expert(s) having no personal or financial ties to Defendants or Defendants' families (other than the consulting agreement) who, by reason of background, experience, and education, is qualified to determine whether Defendants' plain, lite,

flavored, and seafood-containing cream cheese spreads comply with 21 U.S.C. § 343 and applicable regulations ("labeling expert(s)"). Defendants shall inform FDA in writing of the name(s) and qualifications of the labeling expert(s) as soon as they retain such expert(s);

ii. Defendants' labeling expert(s) reviews all labels and labeling used by Defendants for their plain, lite, flavored, and seafood-containing cream cheeses spreads, and certifies in writing to FDA that all such labels and labeling are in compliance with 21 U.S.C. § 343 and applicable regulations; and

iii. Defendants provide to FDA the written certification from the labeling expert(s), and report in writing to FDA, all actions they have taken to ensure that the labels and labeling for their plain, lite, flavored, and seafood-containing cream cheese spreads are in compliance with 21 U.S.C. § 343 and applicable regulations.

C. Defendants, under FDA supervision, according to procedures approved by FDA, and as and when directed by FDA, bring into compliance with the Act and applicable regulations to the satisfaction of FDA, all plain, lite, flavored, and seafood-containing cream cheese spreads and other seafood products, held in the Philadelphia facility or Skokie facility, or held elsewhere for distribution by Defendants. Defendants shall provide the formulation of their products to FDA, and at FDA's discretion, Defendants shall perform or have performed for them analytical testing for the presence and quantity of nutrients declared in product labels and/or labeling.

D. FDA, at its discretion, inspects Defendants' facilities, food products, and labeling, including all records and test results relating to the processing, packing, holding, labeling, and/or distributing of plain, lite, flavored, and seafood-containing cream cheese spreads

and other seafood products and, as FDA deems necessary, samples and analyzes Defendants' plain, lite, flavored, and seafood-containing cream cheese spreads and other seafood products. The costs of all such inspections and analyses shall be borne by Defendants at the rates specified in Paragraph 10.

E. FDA notifies Defendants, in writing, that they appear to be in compliance with all of the requirements of Paragraph 5(A)-(C), the Act, and applicable regulations.

6. After Defendants receive written notification from FDA as specified in Paragraph 5(E) above, Defendants and each and all of their officers, agents, representatives, employees, attorneys, successors, assigns, and any and all persons in active concert or participation with any of them who receive actual notice of this Decree, are permanently restrained and enjoined from:

A. Directly or indirectly introducing or delivering for introduction into interstate commerce any food within the meaning of 21 U.S.C. § 321(f) that is adulterated within the meaning of 21 U.S.C. § 342(a)(4), or misbranded within the meaning of 21 U.S.C. § 343;

B. Directly or indirectly causing any food within the meaning of 21 U.S.C. § 321(f) to become adulterated, within the meaning of 21 U.S.C. § 342(a)(4), or misbranded within the meaning of 21 U.S.C. § 343, while such food is held for sale after shipment in interstate commerce; and

C. Failing to implement and continuously maintain the requirements of this Decree.

7. Representatives from FDA shall be permitted, without prior notice, and as and when FDA deems necessary, to make inspections of Defendants' facilities at their current locations, or at any future location(s), and, without prior notice, to take any other measures

necessary to monitor and ensure continuing compliance with the terms of this Decree. Such inspections may, at FDA's discretion, include, but are not limited to, the taking of photographs and samples and the examination and copying of all records that relate to the processing, packing, holding, labeling, and/or distribution of any article of food. Such inspections shall be permitted upon presentation of a copy of this Decree and appropriate credentials. The inspection authority granted by this Decree is apart from, and in addition to, the authority to make inspections under the Act, 21 U.S.C. § 374.

8. Defendants shall maintain copies of their HACCP plan(s) and all records required under such HACCP plan(s) pursuant to 21 C.F.R. Part 123, at the facility specified in such plan(s), in a location where they are readily available for reference and inspection by FDA representatives. Defendants shall retain all records required to be kept by the HACCP plan(s), by regulation, and/or this Decree for at least five (5) years after the date the records are prepared.

9. Defendants shall immediately provide any information or records to FDA, upon request, regarding the processing, packing, holding, labeling, and/or distribution of any article of food.

10. Defendants shall reimburse FDA for the costs of all FDA inspections, investigations, supervision, reviews, examinations, and analyses that FDA deems necessary to evaluate Defendants' compliance with this Decree. The costs of such inspections shall be borne by Defendants at the prevailing rates in effect at the time the costs are incurred. As of the date that this Decree is signed by the parties, these rates are: $81.61 per hour and fraction thereof per representative for inspection work; $97.81 per hour or fraction thereof per representative for analytical or review work; $0.505 per mile for travel expenses by automobile; government rate or

the equivalent for travel by air or other means; and the published government per diem rate or the equivalent for the areas in which the inspections are performed per day, per representative for subsistence expenses, where necessary. In the event that the standard rates applicable to FDA supervision of Court-ordered compliance are modified, these rates shall be increased or decreased without further order of the Court.

11. If any Defendant violates this Decree and is thus found in civil or criminal contempt, Defendants shall, in addition to other remedies, reimburse Plaintiff for its attorneys' fees (including overhead), investigational expenses, expert witness fees, court costs, and all other costs relating to such contemp proceedings.

12. Defendants shall immediately cease processing, packing, holding, labeling, and/or distributing any plain, lite, flavored, and seafood-containing cream cheese spread or other seafood product, if, based on the results of an inspection, analysis of a sample or samples, or other information, FDA notifies Defendants in writing that such article of food is adulterated or misbranded or that Defendants are not in compliance with the terms of this Decree, the Act, or applicable regulations. In addition, Defendants shall, as and when FDA deems necessary, recall all adulterated or misbranded articles of food that have been distributed or are under the custody and control of Defendants' agents, distributors, customers, or consumers. In addition, Defendants shall institute or re-implement any of the requirements set forth in this Decree and take any other corrective actions as FDA, in its discretion, deems necessary to bring Defendants into compliance with this Decree, the Act, and applicable regulations. Defendants shall immediately and fully comply with the terms of the notice from FDA requiring them to take corrective actions pursuant to this Paragraph. The provisions of this Paragraph are separate and

apart from, and in addition to, all other remedies available to FDA. All costs of recall(s) and corrective actions shall be borne by Defendants. The costs of FDA inspections, sampling, analyses, travel time, and subsistence expenses to implement the remedies set forth in this Paragraph shall be borne by Defendants at the rates specified in Paragraph 10.

13. Any cessation of operations as described in Paragraph 12 shall continue until Defendants receive written notification from FDA that Defendants appear to be in compliance with the Act, applicable regulations, and this Decree, and that Defendants may resume operations.

14. FDA, at its discretion, may require Defendants to perform or have performed for them, analytical testing of any new or reformulated plain, lite, or flavored cream cheese spread, and any new or reformulated seafood-containing cream cheese spread or seafood product, for the presence and quantity of nutrients declared in product labels and/or labeling. The entity conducting such analyses shall simultaneously provide to FDA and Defendants the results of all tests performed on the samples, along with the labels and labeling that correspond to each sample analyzed.

15. Defendants shall notify FDA, in writing, at least thirty (30) calendar days before any change in ownership, name, or character of the business that occurs after the entry of this Decree, including: a reorganization, relocation, dissolution, assignment, lease, or sale resulting in the emergence of a successor entity or corporation; the creation or dissolution of subsidiaries or any other change in the corporate structure or identity of Lifeway Foods, Inc., or any other current or future food processing business of Defendants; or the sale or assignment of business assets, such as buildings, equipment, or inventory that may affect compliance obligations arising

out of this Decree. Defendants shall serve a copy of this Decree on any prospective successor or assignee at least thirty (30) calendar days prior to such sale or change of business. Defendants shall provide FDA an affidavit of compliance with this Paragraph within fifteen (15) calendar days after such service on a prospective successor or assignee.

16. Defendants shall submit all notifications, correspondence, and communications to FDA required by the terms of this Decree to the Director, FDA Philadelphia District Office, U.S. Customhouse, Room 900, 2nd & Chestnut St., Philadelphia, PA 19106, and to the Director, FDA Chicago District Office, 550 W. Jackson Blvd., Suite 1500 South, Chicago, IL 60661.

17. All decisions specified in this Decree shall be vested in the sole discretion of FDA. When contested by Defendants, FDA's decisions shall be reviewed, if necessary, by the Court under the arbitrary and capricious standard set forth in 5 U.S.C. § 706(2)(A) and shall be based exclusively upon the written record that was before FDA at the time of the decision. No discovery may be had by either party.

18. Within ten (10) calendar days after the entry of this Decree, Defendants shall provide a copy of the Decree, by personal service or by certified mail, return receipt requested, to each and all of Defendants' officers, agents, representatives, employees, successors, assigns, attorneys, and any and all persons in active concert or participation with any of them.

19. Within twenty (20) calendar days after entry of this Decree, Defendants shall provide the Directors at both the FDA Philadelphia District Office and Chicago District Office, at the addresses set forth in Paragraph 16, an affidavit of compliance stating the fact and manner of compliance with Paragraph 18, and identifying the names and positions of all persons who were so notified.

20. Within ten (10) calendar days after the entry of this Decree, Defendants shall post a copy of this Decree on a bulletin board in the employee common areas at Defendants' facilities and shall ensure that the Decree remains posted so long as the Decree remains in effect.

21. After entry of the Decree, Defendants shall, within ten (10) calendar days of employment of any new employee hired by Defendants, provide such employee a copy of the Decree, by personal service or by certified mail, return receipt requested. Defendants shall keep these records under this Decree as required under Paragraph 8.

22. Except as provided in the foregoing provisions of this Decree, the parties shall bear their own costs and attorneys' fees in this action.

23. This Court retains jurisdiction of this action and the parties hereto for the purpose of enforcing and modifying this Decree and for the purpose of granting such additional relief as may be necessary and appropriate.

ENTER:

_____
WAYNE R. ANDERSEN
United States District Judge

Dated this _____ day of _____, 2008.

We hereby consent to the entry of the foregoing Decree.

FOR DEFENDANTS

Dated: April 24, 2008

Richard N. Kessler
Attorney for Lifeway Foods, Inc., Julie Smolyansky, and Edward Smolyansky
McDonald Hopkins LLC
640 N. LaSalle St.
Suite 590
Chicago, IL 60610-3731
Tel: 312-280-0111
Fax: 312-280-8236
E-mail: rkessler@mcdonaldhopkins.com

Dated: April 20, 2008

Julie Smolyansky
Individually and as President of Lifeway Foods, Inc.

Dated: April 20, 2008

Edward Smolyansky
Individually and as Chief Financial Officer of Lifeway Foods, Inc.

FOR PLAINTIFF

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

Dated: May 5, 2008

By: DONALD R. LORENZEN
Assistant United States Attorney
U.S. Attorney's Office for the
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Director
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/s Daniel K. Crane-Hirsch
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